REMARKS

Claims 26-28 have been cancelled. Claims 2, 14, 16, and 23-25 have been amended to clarify the subject matter regarded as the invention. Claims 1-25 and 29-31 are pending.

Claim Rejections under 35 U.S.C. §112, first paragraph

The Examiner has rejected Claims 29-31 under 35 U.S.C. §112, first paragraph. The rejections are respectfully traversed.

Claim 29 recites:

> 29. (Previously presented) The system of claim 1 wherein the processor is configured to calculate security consumption including by determining a monetary value associated with the damages avoided.

Paragraph [0039] of the Specification states:

> [0039] In FIG 4, the existing countermeasure is a single network firewall. If the attack is not stopped by the firewall, it will be detected, logged and blocked by the Incident detector and blocker 210. The difference between all attacks sensed on the network perimeter and attacks actually stopped by Incident detector and blocker 210 is the bypass rate of the existing security countermeasures. This data indicates the contribution to risk reduction of the existing security countermeasures. Incorporating acquisition and operating costs, the Risk calculator 240 can produce return on investment metrics that allow the customer to compare the economic value of the various security countermeasures currently installed on the business organization network. [Emphasis added.]

Support for Claim 29 may be found, without limitation, in the underlined portion indicated above.

Claim 30 recites:

30. (Previously presented) The system of claim 1 wherein the processor is configured to determine one or more quantities at least in part by determining a first portion of damages avoided by a customer and by determining a second portion of damages avoided by a party other than the customer on behalf of the customer.

Paragraphs [0038]-[0039] of the Specification state:

[0038] In business organizations with existing security countermeasures installed system 300 is used to calculate the security value of the existing countermeasures. In this embodiment, system 200 is enhanced with Incident sensor 310 that is simply the Incident detector and blocker used in system 200 with the blocking disabled. Attacks originating on the Internet are first sensed and logged by the Incident sensor 310. The attack traffic is allowed to pass through the existing security countermeasures currently installed in the business organization.

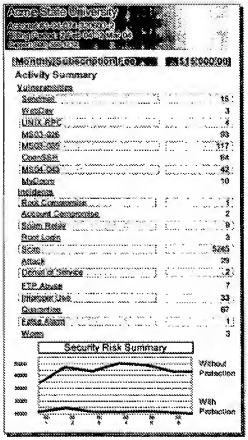
[0039] In FIG 4, the existing countermeasure is a single network firewall. If the attack is not stopped by the firewall, it will be detected, logged and blocked by the Incident detector and blocker 210. The difference between all attacks sensed on the network perimeter and attacks actually stopped by Incident detector and blocker 210 is the bypass rate of the existing security countermeasures. This data indicates the contribution to risk reduction of the existing security countermeasures. Incorporating acquisition and operating costs, the Risk calculator 240 can produce return on investment metrics that allow the customer to compare the economic value of the various security countermeasures currently installed on the business organization network. [Emphasis added.]

Support for Claim 30 may be found, without limitation, in the underlined portion indicated above.

Claim 31 recites:

31. (Previously presented) The system of claim 1 wherein the processor is configured to determine one or more quantities at least in part by determining a count of the one or more blocked attacks.

Figure 3 is reproduced below:



Support for Claim 31 may be found, without limitation, in Figure 3 (e.g. various entries in the right column).

Applicants respectfully request that the rejections of Claims 29-31 under 35 U.S.C. §112, first paragraph, be withdrawn accordingly.

Claim Rejections under 35 U.S.C. §112, second paragraph

Claims 16-21 were rejected by the Examiner under 35 U.S.C. §112, second paragraph. Claim 16 has been amended. Further, examples of corresponding structure may be found, without limitation, in Figure 1, and paragraphs **[0027]-[0030]** of the Specification. Applicants respectfully request that the rejections of Claims 16-21 under 35 U.S.C. §112, second paragraph, be withdrawn accordingly.

Claim Rejections – 35 U.S.C. §101

Claim 10 has been amended in a manner that is believed to overcome the rejection of that claim under 35 U.S.C. §101. Accordingly, Applicants respectfully request that the rejections of Claims 10-14 under 35 U.S.C. §101 be withdrawn.

The rejections of Claims 16 and 22 and corresponding dependent claims under 35 U.S.C. §101 are respectfully traversed.

Contrary to the Examiner's apparent assertions on Page 2 and Page 6 of the new office action, Claim 16 recites an apparatus, **not a process**. An apparatus is statutory subject matter under 35 U.S.C. §101.

As amended, Claim 22 recites a "computer program product embodied in a non-transitory computer-readable storage medium." Support for such a medium may be found, without limitation in Paragraph [0028] of the Specification, which states that a storage input device 170 "such as a floppy disk drive or CD-ROM drive" accepts "computer program products" such as "a floppy disk or CD-ROM or other nonvolatile storage media that may be used to transport computer instructions." Further, while a propagated signal is mentioned in the Specification, a propagated signal is not a "non-transitory computer-readable storage medium" and is thus not claimed by Claim 22.

Applicants respectfully request that the rejection of Claims 16 and 22 under 35 U.S.C. §101 and the rejections of their respective dependent claims be withdrawn accordingly.

Claim Rejections – 35 U.S.C. §103(a)

The Examiner has rejected Claims 1-27 under 35 U.S.C. §103(a) as being unpatentable over Liang (U.S. Patent No. 7,062,553) in view of Takahashi (U.S. Publication 2003/0159064). The rejections are respectfully traversed.

The Liang Reference

Applicants filed a Notice of Appeal on June 23, 2010 along with a Pre-Appeal Brief Request for Review. In the request, Applicants asked that several different aspects of the

December 23, 2009 Final Office Action be reviewed. On August 27, 2010 a Notice of Panel Decision was mailed stating, in part, as follows:

> "4. Reopen Prosecution - A conference has been held. **The rejection is withdrawn** and a new Office action will be mailed." (Emphasis added by Applicant.)

On Page 2 of the new Office action (the Office Action mailed November 12, 2010), the Examiner made the following statement:

> "2. **Applicant's arguments filed June 28, 2010, under 35 USC 102, have been fully considered, and they are persuasive.** However, upon further search and consideration, the new ground(s) of rejection is made in view of Takahashi (US 2003/0159064 A1). (Emphasis added by Applicant.)

A summary of what was argued in Applicant's Remarks in Support of Pre-Appeal, regarding the rejection of the claims under 102 is as follows:

> Liang does not disclose determining "one or more quantities of damages avoided by one or more blocked attacks." [Page 3]

Accordingly, based on the mailing of a new office action in response to the Applicant's Pre-Appeal Brief Request for Review, and based on the Examiner's statements regarding the persuasive nature of the Applicants arguments with respect to 35 USC 102, **Applicants conclude that the Examiner concedes that Liang does not disclose determining "one or more quantities of damages avoided by one or more blocked attacks."**

On Page 7 of the new Office Action, the Examiner appears to take an internally inconsistent view with respect to what is disclosed in Liang:

> i. Liang teaches a system comprising:
>
> (1) a processor (column 4, line 29; column of Liang); and a memory, coupled to the processor, wherein the memory is configured to provide the processor with instructions (column 8, lines 38-44 of Liang) which when executed cause the processor to: **determining one or more quantities of damages avoided by one or more blocked attacks (see Figure 4, element 1402 and Figure 5,**

> **element 1502; column 2, line 66 through column 3, line 19 of Liang)**; and calculate security protection consumption during a period of time (see abstract; column 2, lines 34-44; column 11, lines 7-20 of Liang). (Emphasis added by Applicant.)

The Examiner thus appears to be asserting, in contradiction to the statement made in the Notice of Panel Decision and on Page 2 of the new office action, that Liang discloses determining "one or more quantities of damages avoided by one or more blocked attacks." Applicants respectfully request that in any future office actions the Examiner refrain from stating simultaneously that Liang both does and does not disclose that element.

The Takahashi Reference

On Page 7 of the new office action, the Examiner makes the following statements, in part, about the Takahashi reference:

> (2) determining the quantities of damages.
>
> ...
>
> Takahashi teaches ... (2) in Figure 1, element 36, Figure 2, element S2, and Figure 3, element S15 of Takahashi.

Applicants note at the outset that Claim 1 recites, in relevant part, "determin[ing] one or more quantities of damages avoided by one or more blocked attacks." Claim 1 does not recite "determining the quantities of damages" as implied by the Examiner.

Regarding what is disclosed by the portions of Takahashi cited by the Examiner: Figure 1 element 36 depicts an "error quantity measurement unit." Figure 2 element S2 is a flow chart box that states "measurement of error quantity." Figure 3 element S15 of Takahashi is a flow chart box that states "does error quantity unusually increase?"

None of the portions of Takahashi cited by the Examiner pertain to "determin[ing] one or more **quantities of damages avoided by one or more blocked attacks**," as recited in Claim 1. In reviewing the text accompanying the descriptions of the three figure elements cited by the Examiner, it appears that element 36 of Takahashi is a module that evaluates a log file to conclude whether or not a "computer virus is being generated." [Takahashi, 0038.] Determining

that a computer virus is being generated is not the same as determining one or more quantities of damages avoided by one or more blocked attacks as is recited in Claim 1.

As neither Liang, or Takahashi, whether considered individually or in combination disclose all of the elements of Claim 1, the Applicants respectfully submit that the Examiner has not made out a prima facie rejection of Claim 1 under 35 U.S.C. §103(a). Applicants respectfully request that Claim 1 be allowed. Independent Claims 10, 16, and 22 recite limitations similar to Claim 1 and are therefore also believed to be allowable.

Claims 2-9, 11-15, 17-21, 23-26, and 29-31 depend from one of the aforementioned independent claims and are believed to be allowable for the same reasons described above.

The foregoing amendments are not to be taken as an admission of unpatentability of any of the claims prior to the amendments.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

Dated: April 12, 2011

/Robyn Wagner/
Robyn Wagner
Registration No. 50,575
V 408-973-2596
F 408-973-2595

VAN PELT, YI & JAMES LLP
10050 N. Foothill Blvd., Suite 200
Cupertino, CA 95014